IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15023 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS & LR OF DECD.RASIKBHAI GANESHBHAI PATEL

Versus

TRIBHOVANBHAI VALJIBHAI C/O.PRABHATBHAI BHAGWANBHAI

Appearance:

1. Special Civil Application No. 15023 of 2004

MR BC DAVE for Petitioner No. 1-1/4

NOTICE NOT RECD BACK for Respondent No. 1-3

MR NAGESH SOOD, AGP Respondent No. 4-5

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 25/01/2005

ORAL JUDGEMENT

#. Rule. Mr.Nirjar Desai waives service of rule on

behalf of respondent Nos.1 to 3 and Mr.Sood, learned AGP, waives service of rule for respondent nos.4 and 5.

#. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioners have challenged the legality and validity of the order passed by the Secretary (Appeals) Revenue Department, State of Gujarat dated 10.05.2004 / 14.05.2004 in Revision Application No. 32 of 1997 in dismissing the same and confirming the order passed by the Collector, Vadodara dated 12.09.1997 in R.T.S.Suo Motu Revision No.38 of 1997.

#. The dispute is with regard to the land bearing survey no. 622 situated at village Kotambi, Taluka Vaghodia, District Vadodara. It appears that respondent nos. 1 to 3 were owners of the land in question and the same is restricted land under the provisions of Section 73 AA of the Bombay Land Revenue Code (`the Code' for short). The petitioners claim to be the owners of the land in question in pursuance of the consent decree passed by the learned Civil Judge (S.D.), Vadodara in Regular Civil Suit no. 560 of 1995. Necessary entry was made in the revenue record vide entry no. 4446 dated 20.08.1995. As the Collector, Vadodara was of the opinion that the said entry no. 4446 dated 20.08.1995 is contrary to the provisions of the Code, more particularly, Section 73 AA of the Code, proceedings were initiated for cancelling the same by exercising suo motu revisional power and the Collector, Vadodara by his order dated 12.09.1997 in R.T.S. Suo Motu Revision No. 38 of 1997 set aside the entry no. 4446 dated 20.08.1995 and passed the order for initiation of the proceedings for breach of Section 73 AA of the Code. The aforesaid order came to be challenged by the petitioners before the State Government i.e. Secretary (Appeals) Revenue Department which was numbered as Revision Application No. 32 of 1997. The Secretary (Appeals) by his judgment and order dated 14.05.2004 dismissed the said revision application confirming the order passed by the Collector, Vadodara dated 12.09.1997 by which the Collector, Vadodara set aside the aforesaid entry no. 4446. The order passed by the Secretary (Appeals) Revenue Department dated 14.05.2004 passed in the aforesaid revision application no. 32 of 1997 is the subject matter of the present petition under Article 226/227 of the Constitution of India.

#. Mr.B.C.Dave, learned advocate appearing for the

petitioners has relied upon the judgment of this court in the case of Evergreen Apartment Cooperative Housing Society Ltd. V/s Special Secretary, Revenue Department, Gujarat State, reported in 1991(1) G.L.R. 113 and other judgments and has submitted that while exercising the powers under the Code i.e. R.T.S. authority would not have examined the provisions of other enactments even though very officer may be holding the power under the other enactments. Therefore, it is submitted that the Collector while exercising the power under Code would not have examined in respect to the other enactments for prohibition of Section 73 AA of the Code and therefore he submitted that the order passed by the authority for setting aside the entry in question is illegal and deserves to be quashed and set aside.

#. Mr.Desai, appearing for the respondent nos. 1 to 3, has vehemently submitted that in view of the fact that the transaction in question itself is in breach of the provisions of Section 73 AA of the Code, the entry is rightly set aside by the Collector which is confirmed by the Secretary (Appeals) and, therefore, requested to dismiss the present Special Civil Application.

#. Mr.Sood, learned A.G.P., appears for the respondent State and submits that merely on the basis of the consent decree, the transaction in question cannot be legalised and, therefore, it is submitted that irrespective of the consent decree, if there is a breach of any provisions of Section 73 AA of the Code, the authority is justified in cancelling the entry and directing to hold necessary inquiry or to initiate proceedings under Section 73 AA of the Code. He has relied upon the judgment of this Court in the case of Jayantilal Jethalal Soni V/s State of Gujarat rendered in Special Civil Application No. 12547 of 2004 (Coram : Jayant Patel, J) and submitted that entries are always subject to ultimate outcome of the proceedings to be initiated by the competent authority under the appropriate Act.

#. Heard the learned advocates for the parties.

#. It is an admitted position that the Collector was exercising the powers under the Code with regard to the RTS proceedings only. The dispute was with regard to the entry in question. He may have jurisdiction for initiating proceedings under Section 73 AA of the Code, but in the present case, he was exercising the power under Rule 108 of the Bombay Land Revenue Rules (`the Rules' for short). Entries in the revenue record are only for fiscal purpose and for the purpose of recovering

the revenue. The contention on behalf of the petitioners that the petitioners have become owners by virtue of the consent decree and, therefore, no proceedings for the breach of Section 73 AA of the Code be initiated cannot be accepted. By consent, the transactions which are dehors the law cannot be legalised. Under the circumstances, the Collector was right in passing the order with regard to directing to hold inquiry under Section 73 AA of the Code. Merely because there is consent decree, it cannot be said that the proceedings for breach of Section 73 AA of the Code cannot be initiated. At the same time, it is also required to be noted that the revenue entry should not have been set aside by the Collector on the presumption that there will be breach of Section 73 AA of the Code. Considering the judgment of this Court in the case of Evergreen Apartment Cooperative Housing Society (supra) as well as unreported judgment of this Court in case of Jayantilal Jethalal Soni (supra), the order passed by both the authorities below cancelling the entry no. 4446 are required to be quashed and set aside and accordingly the same are quashed and set aside. However, it is observed that said entry would be subject to the ultimate outcome of the proceedings to be initiated by the appropriate authority under the provisions of the Code for breach of Section 73 AA of the Code. The order passed by the Collector, Vadodara directing to initiate the proceedings under Section 73 AA of the Code is not disturbed. It will be open for the appropriate authority for initiating proceedings for breach of Section 73 AA of the Code in accordance with law and on merits.

##. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent. No costs.

(M.R.Shah,J)

(pathan)